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CATHY A. CATTERSON
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MENDES STANLEY BROWN, Petitioner - Appellant, v. SILVIA GARCIA, Warden; CALIFORNIA DEPARTMENT OF CORRECTIONS, Respondents - Appellees.	No. 03-15438 D.C. No. CV-01-3680-TEH MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Thelton E. Henderson, District Judge, Presiding

Argued and Submitted December 1, 2003
San Francisco, California

Before: TASHIMA, THOMAS, and SILVERMAN, Circuit Judges.

State prisoner Mendes Stanley Brown ("Brown") appeals the denial of his 28 U.S.C. § 2254(d)(1) habeas petition.[1] We review the district court's grant or

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

[1] Because the parties are familiar with the facts, we do not recite them

(continued...)

denial of habeas relief de novo. Evanchyk v. Stewart, 340 F.3d 933, 939 (9th Cir. 2003). In doing so, however, we must observe the deferential standard for review of state court determinations under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). Under the AEDPA, the state court's determination is entitled to deference if it was not "contrary to, or . . . an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1).

A state court decision is contrary to clearly established federal law only "if the state court applies a rule that contradicts the governing law set forth in [Supreme Court] cases" or "if the state court confronts a set of facts that are materially indistinguishable from a decision of [the Supreme] Court and nevertheless arrives at a result different from [Supreme Court] precedent." Lockyer v. Andrade, 538 U.S. 63, __, 123 S. Ct. 1166, 1173 (2003) (internal quotation marks omitted). Here, the California Court of Appeal in People v. Brown, 89 Cal. Rptr. 2d 589 (Ct. App. 1999), relied on Castaneda v. Partida, 430 U.S. 482 (1977), to conclude that the state adequately rebutted the prima facie case of discrimination to defeat Brown's equal protection claim. Brown, 89 Cal. Rptr.

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[1](...continued)
here except as necessary to aid in understanding this disposition.

2d at 594-98. Because the facts of Brown's case are "materially indistinguishable" from the facts in that case, the state court's reliance on Casteneda was neither contrary to nor an unreasonable application of Castaneda.

On Brown's due process claim, the state appellate court held that, even assuming that the duties of a grand jury foreperson under California law differ from those of the federal counterpart, Brown had failed to show that he suffered actual prejudice from the manner in which the foreperson was selected. Brown, 89 Cal. Rptr. 2d at 599-600. This decision also was not an "unreasonable application" of or contrary to clearly established federal law, as set forth in Hobby v. United States, 468 U.S. 339, 345 (1984).

Accordingly, the judgment of the district court denying Brown's petition for habeas corpus is

AFFIRMED.